goods soon after the theft, the presumption raised is of a fact that he is either the thief or has received the goods knowing them to be stolen. The presumption is a presumptive fact and rebuttable by an account for his possession. Similarly, under section 144 of the Road Traffic Ordinance, the presumption (which, I repeat, is a statutory invention and there is, in this sense, a presumption of law) is one of a fact, that upon proof of conveyance of persons in a vehicle, the presumption is that the conveyance was for hire or reward. Confusion would be avoided if it is realised that while a presumption is a presumption of law, the presumption is as to a fact, and that a presumption of facts (so-called) is in reality an inference to be drawn from facts.

When the defence is called on both the pirate-taxi and insurance charges, the accused has to rebut the presumption of law or a presumptive fact and the inference drawn from the presumptive fact, and if he can show that the conveyance of persons in a motor vehicle was not for hire or reward, for example by showing that the conveyance was of persons from whom he would not reasonably obtain, or be expected to obtain, payment, then he has rebutted the presumption of law as to a fact, and he is entitled to be acquitted of the charge of operating a pirate-taxi and also, without more, of the insurance charge. If he fails to rebut the presumption of law with regard to the conveyance of persons for hire or reward, he could nevertheless answer the charge by producing an adequate insurance cover for such user: see *Khoo Teck Yam* v. *Public Prosecutor*.[2] Perhaps because of the inherent improbability of expecting anyone who is prepared to flout the law and operate a public service vehicle without a valid licence to legalise part of his illegal operation by taking out an insurance cover for commercial use, the result would be a conviction on the insurance charge if the presumption under section 144 of the Road Traffic Ordinance is not rebutted of conveyance for hire or reward. But the same set of facts will acquit or convict the accused on both charges.

That is (if I may say so without disrespect) perhaps the reasoning behind Ong J.'s (as he then was) *dictum* in the case of *Darus* v. *Public Prosecutor*,[3] that conviction under the pirate-taxi charge on the evidence produced makes conviction under the insurance charge inevitable. In distinguishing his judgment from that of Ong J. in *Darus'* case, *supra*, Ali J. assumed that the conviction on the insurance charge was inevitable because Ong J. was satisfied that the same evidence that went in support of the pirate-taxi charge was, without the aid of the presumption, sufficient to support the other charge.

I have also called for the record in *Darus'* case, *supra*, and I find that the evidence was, as in this case, evidence of groundwork observation, evidence of conveyance of passengers at the time and place in the charge, and evidence that the insurance cover issued for the vehicle in question was for private user. There was the additional evidence of the three passengers in the case, but all three denied that they paid or intended to pay Darus for the conveyance. Their evidence was, therefore negative. Admittedly, objection was not taken in that case that the joinder was wrong or prejudicial, but the point is that Ali J. was, with the greatest of respect, wrong in his assumption.

For myself, I cannot agree that the joinder is wrong or prejudicial. The joinder appears to me wholly proper, having regard to the fact that both offences were committed in one and the same transaction. Perhaps, too, the accused might appreciate that such joinder would relieve him of the hardship of having to stand his trial on two charges on two separate occasions.

On the evidence adduced in this case, I consider that the learned magistrate is in error in holding, as he did, that the charge was groundless. The order of discharge is set aside and the case is remitted to him to call on the defence on the insurance charge.

I would indicate, in view of the conflict of judicial decision, that I am prepared to give a certificate to go to the Federal Court.

Order accordingly.

CHAMPION MOTORS (M) LTD. v. LEONG SIEW KWAN

[A.C.J. (Pawan Ahmad J.) April 27, 1968]

[Malacca — Civil Appeal No. 5 of 1966]

Landlord and Tenant — Controlled premises — Notice to quit sent by registered post to premises — Tenant not in occupation of premises — Whether tenancy terminated — Action for trespass against occupier who was in occupation with permission of tenant — Control of Rent Ordinance, 1956.

Where the tenant is not in actual possession of the premises, the mere proof that the notice to quit had been sent by registered post to the tenant, addressed to the premises is insufficient to establish that the tenancy had been lawfully terminated. It must be further proved that the notice had in fact been brought to the knowledge of the tenant.

The appellant, landlord of the premises, sent a notice to quit by registered post to the tenant, addressed to the premises. The tenant had vacated the premises some nine years earlier and was residing elsewhere. In an action for trespass against the respondent (the son of the tenant) who was in occupation of the premises with the permission and authority of the tenant,

Held, dismissing the appeal: the action for trespass could not be maintained as the tenancy had not been lawfully terminated.

Cases referred to:—

(1) *Lim Kien Mok* v. *B. H. Kevan* [1963] M.L.J. 284.

(2) *Kam Sam Mooi* v. *Shin Heong Long* [1959] M.L.J. 249.

CIVIL APPEAL.

D. A. Devadason for the appellants.

Yau Meng Fai for the respondent.

Pawan Ahmad J.: This is an appeal by the plaintiffs against the decision of the learned magistrate Malacca for dismissing their claim for vacant possession of premises known as No. 14B, Pengkalan Rama, Malacca. The plaintiffs are a limited company carrying on the business of motor car dealers at No. 14, Pengkalan Rama, Malacca, and the defendant is in occupation of the said premises.

When the plaintiffs became the landlords of the premises in question in 1961, one Leong Fatt alias Leong Weng Keng was the tenant but he was not in occupation of it when this action was filed. He vacated from the premises when his wife died some nine years prior to the date of trial but he continued to pay the rent and with his permission his son, the defendant, continued to remain in occupation of the premises.

In 1964 when the plaintiffs wanted to demolish the premises in furtherance of their expansion plan they sent through their solicitors a notice to quit (P.1) to be served on Leong Fatt alias Leong Weng Keng by A. R. register addressed to the premises in question. The A. R. card was in the course of the trial produced by the plaintiffs as exhibit P.4.

By the time this case came up for trial before the learned magistrate, Leong Fatt alias Leong Weng Keng had died. The premises in question falls under the Control of Rent Ordinance 1956 and counsel for both parties by consent agreed that there was only one issue to be determined by the court, and the issue was whether or not the defendant was a trespasser. The learned magistrate found as a fact that the defendant was in occupation of the premises with the permission of his father and was therefore not a trespasser.

In order to decide on the present issue I think it will be necessary first of all to consider whether the notice to quit was properly served. In the case of *Lim Kien Mok* v. *B. H. Kevan*,[1] it was held that the rule as regards service on the tenant is that the notice left at the tenant's house, but not served on anyone personally, is effectual if it is proved that it actually came to his hands in time to give him notice of the proper length; but in the present case the notice to quit was sent by A. R. register for service on Leong Fatt alias Leong Weng Keng at the premises in question but he was not at that time residing at the premises but at No. 153E Bukit China Dalam, Malacca. It is also clear from the evidence of the defendant that the notice to quit was not received by the defendant's father but by some unknown person. Since the notice to quit has not been proved by the plaintiffs to have been served on Leong Fatt alias Leong Weng Keng his tenancy was never lawfully determined by the plaintiffs and therefore the plaintiffs cannot in law maintain any action of trespass against the defendant who was in occupation of the premises with the permission and authority of Leong Fatt alias Leong Weng Keng, the lawful tenant. See the case of *Kam Sam Mooi* v. *Shin Heong Long* [2].

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *D. A. Devadason; Murphy & Dunbar.*

CHAN KET MING v. VOO SUI LIM

[F.C. (Pike C.J. (Borneo), Ong Hock Thye and MacIntyre F.JJ.) April 29, 1968]

[Kota Kinabalu — Federal Court Civil Appeal No. X.9 of 1967]

Contract — Breach of — Contract to extract timber — Making earth road across land a condition — Alleged breach of condition — Recission of agreement — Damages.

The plaintiff/respondent brought an action for damages for breach of contract. The breach alleged was that the defendant/appellant had wrongfully refused to permit him to enter upon the third and final stage of the felling and extraction of timber from the defendant/appellant's land. The parties, during the course of the hearing agreed the amount of damages at $26,000 if judgment were to be given for the respondent and the pleadings were amended accordingly.

By an agreement entered into between the appellant and respondent it was agreed that in consideration of the payment of $44,000 the respondent should have the exclusive right to enter on certain land of an area of approximately 100 acres belonging to the appellant and to extract timber therefrom. The extraction was to take place in three stages, namely extraction from 10 acres for the first stage, 50 acres for the second stage and 40 acres for the third stage and the respondent was to pay to the appellant on entering upon each stage $10,000, $20,000 and $14,000 respectively.

Clause 3 of the agreement required the respondent to make an earth road across the land and it was the alleged breach of this clause by the respondent which led to the recission of the agreement by the appellant. Clause 3 was as follows: "The contractors agree to make an earth road across the said land on the site as directed by the licensee, the making of such road shall also be on the same footing as the payment of the capital sum hereby agreed to be paid. That is to say the contractors shall construct the road in stages. The road shall be of a total width of 18 feet but the middle portion shall only be of 12 feet in width."

Because of the alleged breach by the respondent of this clause the appellant rescinded the agreement and refused to allow the respondent to enter upon the third stage of extraction of timber. The appellant alleged that the respondent had not built any road. The respondent maintained that he had built an earth road which was in accordance with the very vague description of the type of road appellant gave him and that he handed the road over to the appellant in two stages, namely that